

State of California
Department of Public Works
Division of Water Resources

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In the Matter of Application 7411 of C. E. Kirk to
Appropriate from Cabin Spring, a Tributary of
Searles Lake in Inyo County for
Domestic Purposes

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Decision A 7411 D - 345

Decided

July 24, 1933

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APPEARANCES AT HEARING HELD JULY 12, 1933, AT LOS ANGELES, CALIFORNIA

For Applicant

C. E. Kirk

C. E. Kirk

For Protestant

Nellie E. Dean

Mrs. J. D. Hillier

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, Division of
Water Resources, Department of Public Works, State of California.

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O P I N I O N

DESCRIPTION OF PROJECT

Application 7411 by C. E. Kirk is to appropriate 0.0072 cubic foot
per second from Cabin Spring, a tributary of Searles Lake, in Inyo County for
domestic purposes. It is proposed by applicant to pipe the waters of this
spring a distance of some 4000 feet to his place of use within the NW $\frac{1}{4}$ NW $\frac{1}{4}$
Section 31, T 23 S, R 43 E, M.D.B.&M. for the irrigation of a domestic garden
and household purposes.

Filed by C. S.

DESCRIPTION OF PROTEST

Nellie E. Dean has protested the approval of Application 7411 upon the ground that the waters sought to be appropriated were developed in 1910 and have since that time been used for domestic and mining purposes by "Davenport Mines." What her own relationship to "Davenport Mines" is does not clearly appear, but she is apparently the owner thereof or a part owner. She alleges that Cabin Spring, the source, is situated upon one of the Davenport group of claims, that the waters thereof have been used in the development and operation of these claims, and that it has not been possible to develop a sufficient supply.

THE FACTS AS TO RIGHT OF ACCESS

It appears Mrs. Dean (and her associates if she is not the sole owner of Davenport Mines) some years prior to the filing of Application 7411 located a group of claims in Graham Jones Canyon on one of which is situated the spring from which it is proposed to appropriate under this application. It appears further that from time to time prior to 1930 she filed proofs of labor which were intended to maintain her possessory right of this certain claim; that in 1930 she leased this property to one Grover C. Thompson who was to develop and operate the property; that Mr. Thompson and associates in that year did live for a time at the spring; that he soon gave up his lease and left the county, and that for the years 1932 and 1933 Mrs. Dean has done no assessment work, claiming exemption under the law. Whether or not any assessment work was done on these claims in 1931 does not clearly appear.

There was apparently some doubt as to the validity of the claim asserted by Mrs. Dean because the evidence shows that in 1932 Oberturfer and Clark posted a notice of mining location on the particular claim on which Cabin Spring is situated. Applicant exhibited proof of labor and a bargain and sale deed dated July 10, 1933, by which he claims to have come into possession of the Oberturfer and Clark interest.

Whatever the facts may be as to the true owner of the land surrounding the spring it is clear that for some three years the applicant has used the waters of this spring and during the last two years has maintained a pipe line diverting from the spring by which the waters thereof are conveyed to the place of use specified in Application 7411. The Division has given the contestants ample opportunity to institute proceedings if they so desired for a determination of the matter of ownership but so far as we are advised no steps have been taken toward that end. This office lacks jurisdiction to determine the matter and will therefore proceed in its action on the application as if this point had not been raised.

UNAPPROPRIATED WATER IS AVAILABLE

It appears from the evidence adduced at the hearing on July 12th that the only use of the water since 1930 has been by applicant and this is clearly without claim of right. Protestant Nellie E. Dean and her associates doubtless made some use of the waters of Cabin Spring in 1930 and perhaps in earlier years, but under what claim of right is not clear, and the use for aught that has been shown was of such a desultory and intermittent character that it may well have never ripened into any valid and substantial right. It is clear there has been little or no use of the waters of Cabin Spring by

protestant or her associates since 1930 and that the waters thereof have wasted except as diverted and used by applicant. It is therefore concluded that unappropriated waters are available under Application 7411.

O R D E R

Application 7411 for a permit to appropriate water from Cabin Spring, a tributary of Searles Lake, having been filed, and having been duly completed and advertised, a protest against the approval thereof having been filed, a hearing having been held upon said protest of which applicant and protestant were duly notified, and the Division of Water Resources now being fully advised in the premises:

IT IS HEREBY ORDERED that said Application 7411 be approved, and that a permit be issued thereon subject to the usual terms and conditions.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 24th day of July, 1933.

EDWARD HYATT, State Engineer

By Harold Conkling
Deputy

